APPENDIX A — ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION ON MOTION TO DISMISS DATED AND ENTERED JUNE 24, 1998

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CASE NO. 98-32663
CHAPTER 11

IN RE:
THE GINTHER TRUSTS,
A TEXAS JOINT VENTURE

Debtor.

ORDER ON MOTION TO DISMISS

The Court has considered the Motion to Dismiss and for Sanctions filed by Elton M. Hyder, III, et al. and finds that the relief requested should be granted in part. The Court finds that the case should be dismissed unless the Petition and Schedules are amended within the time and in the manner ordered herein, but that sanctions should not be imposed. It is therefore,

ORDERED, that this case shall be dismissed without further order of the Court unless Debtor, on or before June 26, 1998: (a) amends the Petition, Schedules and Statement of Financial Affairs to provide that it is a joint venture composed solely of the Nobel C. Ginther Grantor Trust

a/k/a N.C. Ginther Grantor Trust and the Minnie Lee Ginther Grantor Trust a/k/a M.L. Ginther Grantor Trust; and (b) amends its Schedules and Statement of Financial Affairs to provide that the only property of the joint venture comprising Debtor's bankruptcy estate is its interests in or relating to the El Dorado Golf Club, Inc. and the real estate known as the "El Dorado Ranch" described in Debtor's existing Schedules as "undivided interest in approximately 2,033 acres of real property located in Harris County, Texas." It is further,

ORDERED that no other property, whether listed in the Debtor's existing Schedules or otherwise, is property of the Debtor's bankruptcy estate or subject to the automatic stay pursuant to 11 U.S.C. § 362. It is further,

ORDERED that the Debtor shall have the exclusive right to file a plan of reorganization up to and including September 9, 1998, and, if the Debtor files a plan within such exclusive period, the Debtor shall have the exclusive right to seek confirmation of a plan up to and including November 6, 1998. It is further,

ORDERED that the deadline for filing Proofs of Claim shall be extended to and expire on July 31, 1998. It is further,

ORDERED that a special meeting of creditors pursuant to 11 U.S.C. § 341 shall be July 15, 1998 at 1:30 p.m. at 515 Rusk, Room 3401, Houston, Texas 77002. It is further,

ORDERED that the Clerk of Court shall serve a copy of this Order on all creditors and parties in interest listed on the mailing matrix or who have file notices of appearance in this case.

Appendix A

SIGNED on June 24, 1998.

s/ William Greendyke
UNITED STATES BANKRUPTCY
JUDGE

APPROVED AS TO FORM:

s/ Barnet B. Skelton, Jr.
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ATTORNEY FOR MOVANTS

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s/ David P. McClain
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ATTORNEY FOR THE GINTHER
TRUSTS, A TEXAS JOINT VENTURE

Appendix A

s/ Nancy Holley
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APPENDIX B — EXCERPTS FROM TRANSCRIPT DATED JANUARY 28, 2000; JUDGE GREENDYKE'S ORAL RULING ON MOTION TO SELL/AMENDED MOTION TO SELL/2ND AMENDED MOTION TO SELL (TRANSCRIPT, JAN. 28; 230-243)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CASE NO. 98-32663-H4-11
ADVERSARY NO. 99-3058-H4-ADV.

THE GINTHER TRUSTS,
A TEXAS JOINT VENTURE

v.

NOBLE C. GINTHER, JR., ET AL

THE COURT: Mr. McClain, I think the requirements of 363h have been met. And I think the record's also replete with evidence as to who owns the legal title to the property and who ought to be entitled to distributions, again, based upon the title report.

The — one of the big issues that Mr. Bowen raises is a question of debtor's ability to deal with the property and the equitable title of the folks who comprise the beneficiaries of the trusts that in turn compromise the joint venture. Again, I think that's water under the bridge. I think — you know, really, in effect he recognizes, if not in a binding way then in at least a candid form of argument way that this is a positive thing to occur with this property.

Appendix B

And this is a court of equity and all these folks have claims in some form, shape or fashion, even though the catalyst for all this Hyder-Rowan is at least severely handicapped, if not gone. If Hyder-Rowan were here we would certainly have the ability to do it and just because they've lost on appeal doesn't mean that he disappeared and we would certainly have the ability to deal with this property.

This Court's about making pragmatic decisions about when to sell something and make claims attach to the proceeds or let the debtor distribute on a pro rata or equitable basis based upon an equation reached between the claims amount and a much lesser amount of assets to distribute.

I don't think that Mr. Cox has been blithe about this. I don't think that he is being capricious or frivolous with regard to how he's dealing with this sale. I think he's being practical and realistic. I think he's dealt with — from what I can see and from my judgment of his demeanor, in good faith with how he's dealt with everybody. I think unquestionably, and I can just recall how they've dealt with me, Redstone's been in good faith and I think has dealt fairly with me and with everybody from what I can tell.

Mr. Cox has a fiduciary duty to me now. That's the one — I don't need to dig down three layers or two layers to find another fiduciary duty. I'm concerned more about the one that he's dealing with me with respect to.

In effect we created the debtor because a year ago there was a bunch of other different lawyers sitting at that table where you're sitting and they were wanting to kill the debtor

and tear up all that 2,000 acres and it wouldn't have gone to anybody who had a claim against the estate other than Hyder-Rowan, based upon what they had done.

I didn't agree with the way the case was filed and I tried to be reasonable about my analysis of what Mr. McClain was telling me and I didn't agree with everything he said but I did agree upon the one core argument. What I saw was different than what he was arguing I should see, and I saw a joint venture for not all the trust interests but just that interest that's represented by the 2,000 acres in the golf country club.

And that's why we're here. And from an equitable procedural standpoint I think that was something that was probably appealable way back then. And it should have been brought to our attention. I don't think it's fairly appealable with respect to this order, although you're free to do whatever you want to do with regard to what we're doing here.

I think inescapable from everything I've heard, from all the witnesses and I think it's apparent from watching the demeanor of the parties and looking at these ancient, almost twenty-year old court proceedings between the parties who are here today, I think the best thing for that 2,000 acres is to go ahead and clean it up by selling free and clear of all these claims and interests to somebody who will do something with it besides fight over it.

To me it's just going to cure litigation or potential for litigation — eliminate potential for litigation rather than enabling it to persist. Any claims that might be made with respect to the property or the debtor should be made in

connection with the case. Obviously the sale order will be a final order and anything we do in connection with the Chapter 11 case will be a final order.

I don't think that the order, the sale order and the findings we've made in connection with 362 — 363h or I ought to have any res judicata effect on the Fergus Ginther state law claims against Nucorp or Mr. Davis. To that extent — to the extent argued, not proving any breach of fiduciary duty claims that might exist after Judge Hoyt's order because of anything that might have occurred at the hand of Mr. Davis or Nucorp ought to be preserved. And no res judicata effect with regard to this order or these findings ought to enure to the benefit of Mr. Davis or Nucorp in connection with those prior orders that Judge Hoyt — prior relationship established by the agreements of the parties that Judge Hoyt dealt with in his order.

I think Judge Hoyt's order does say that Nucorp is the legal title owner and has complete authority to deal with this property in connection with its property rights, its legal rights that flowed from those prior bankruptcy cases. There's no doubt in my mind about that from looking at Judge Hoyt's order.

I don't make any finding of bad faith against Davis and Nucorp. I think for me to find affirmatively that they are in good faith and have dealt fairly with respect to all parties in connection with the fee arrangement would be something that would be used against Fergus Ginther.

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I will find — you know, I see no evidence of bad faith. I see no evidence of unreasonableness with regard to the estate. So that's my focus is in light of the property, the parties who are making claims against the estate, and the parties who are making claims against the property, does all of this look right from an economic standpoint. And my economic barometer is going through the roof. This is the absolute best thing that can happen to this property. And a 350,000 or $700,000 commission, finder's fee or whatever it is in connection with this property in light of the amount of money involved I think is reasonable under the circumstances as far as the estate is concerned. Okay? So I don't have a problem with that.

I recognize how the deal has changed. I've recognized the fee split arrangement was originally 2 million, then 1 million, then something else and now it's gone way down. I think that's a further indication that the parties are responding to our lawyers and our situation in trying to make it be more reasonable. That makes me feel better. A million dollars looks a lot worse than $350,000 in terms of what's reasonable under the circumstances.

I think Mr. Cox's testimony that — and really probably Mr. Davis's testimony to the effect that we couldn't get hardly anything for an undivided 51 or 54 or 57 percent interest in this property is accurate. I don't know who would want to buy an undivided one-half interest in this property with 15 other co-owners. It just doesn't make any sense. So I think the only commercially reasonable thing to do with this piece of property is to sell it free and clear of all these interests.

Appendix B

I recognize you've made agreements with the TNRCC. You've alluded to me some — I know Bobbie Baylis [sp.ph.] is involved in this. I don't know what you want to do with her or her interest in this. I'm reckoning that you all will handle that. That's all a matter of our record, at least in the file.

The other property interests I want to see how you deal with those. You've already alluded to those earlier in argument. I'm going to want to see the order and how you treat those. Stone Mountain's in default and I think the oil and gas lease ought to be done away with. I think to the extent that the owners' interests, to that extent those bundle of rights that would center around the mineral estate are sufficient property interest to be sold to do away with whatever has been leased away to Stone Mountain, particularly in light of the default.

I'm trying to think what else I haven't touched upon. Let me look through my notes quickly.

In case it wasn't clear from my general finding with regard to 363h, I do agree partitioning in kind is impossible because of the variation in land and the great number of owners.

I recognize that the purchase price has changed or dropped in connection with reduction in the amount of land to be purchased, as well as the business reality of having to deal with Noble Ginther and perhaps the Davis fee arrangement. The — I still don't think that that ought to be something that's in effect held against Mr. Davis in

connection with the estate. I mean I — after hearing all this I can't imagine why Redstone hung in for so long. I mean it's amazing.

That's it. What is this? I've been reminded of the motion by Amber Ginther to intervene and the proposed order. I'm going to go ahead and sign it today based upon my findings and my calling for an order from the debtor approving the sale free and clear. And I'll allow the clerk to docket that.

How is it going to take to get me an order?

MS. COOK: We're arguing here, Your Honor.

MR. SPEAKER: We're arguing.

MS. COOK: We have one drafted and it's going to need to go to the title company. I would say — Gary thinks a week.

MR. McCLAIN: I would like to have it done this week.

MS. COOK: We'll try to get it sooner than that.

MR. McCLAIN: I mean not this week.

THE COURT: I'll just wait for you. That's your problem and not mine.

What I've read into the record's going to suffice for findings and conclusions. If anybody wants me to make additional conclusions or findings, to a limited basis you

might do it in the order. Obviously, some of the things I've said I want implemented in the order and I will look at it in the order. If I have a problem with what the order says that I don't feel like I can fairly fix on my own, we may call you all back for a hearing the date of entry of the order.

What your request was, Mr. Brown, I don't want to grant with regard to the order and allow you to do that by separate motion in connection with the main case motion to lift. Obviously —

MR. BROWN: I do want to be sure that the principle and interest —

THE COURT: Obviously, this order is going to deal with both the motion to sell and the judgment. Okay?

MR. McCLAIN: Well, actually, Your Honor, we were contemplating, I think, one or two orders.

MS. COOK: We can do it either way. I have draft —

THE COURT: I would do one.

MS. COOK: That's how I drafted it.

THE COURT: That would make it a lot easier if somebody decides to appeal.

MR. McCLAIN: We're going to do a final judgment and an order.

THE COURT: Yeah. Just have — and just put a line in that says a copy of this judgment should be docketed in the main case to represent disposition of main case motion so and so.

Mr. Hill?

MR. HILL: Your Honor, I'm sorry if I missed this in your ruling, but the only comment I heard was that you would look to see how they would treat the co-owners in the order that they presented to you. I would ask the Court for a ruling regarding the Nucorp request that the disbursement be made to Nucorp so that at least we're clear on that.

THE COURT: It should have been implicit. Absolutely.

MR. HILL: Okay. Thank you.

THE COURT: Absolutely. That's crystal clear from Judge Hoyt's order that you're entitled to distribution, notwithstanding the recitation I want in the order that the impact of the order and the disbursement to Nucorp has no res judicata effect on any state law rights that might be assertable by Fergus Ginther against Mr. Davis or Nucorp.

MR. HILL: Thank you.

MR. BROWN: Your Honor, I do want to make clear that the — and request that the order provide that the uncontested portion of principle and interest or if there's agreement as to attorney's fees on Tebear Investments' lien would be paid and disbursed at the closing.

THE COURT: I thought that was the agreement.

MR. BROWN: And that was the agreement we started this proceeding with, but I would ask that it be incorporated in the order.

MR. HIGGINS: I think that was also our agreement. The only thing we asked is if they would provide a calculation and we'll sign off on it.

MR. McCLAIN: And it's possible, Your Honor, that you're going to find that we may reach an agreement as to a date — as to a sum certain where he's willing to cap his claim.

MR. BROWN: I've made that offer.

MR. McCLAIN: He's made an offer.

MR. BROWN: We'd like to go and never see this case again.

MR. McCLAIN: The feeling is mutual, Your Honor.

THE COURT: Are you talking about Mr. Brown or you talking about the case?

MR. McCLAIN: I'm talking about both, Your Honor. I really am. But we may have a — we may have a sum certain with respect to that amount in the order.

MS. COOK: The other thing I can think of, Your Honor, is we will need to address the 363i rights in the final order which we've talked about. I think it'll need to reflect who the record owners are.

THE COURT: And we're going to go on the basis that — Exhibit #1, right? That's fine with me.

I want Mr. Bowen to see the order, okay?

MR. McCLAIN: We'll circulate them to —

THE COURT: And I would appreciate it if you'd sign off as to form, Mr. Bowen, so that you see what we're doing with regard to Fergus Ginther state law rights. I think I've been complete and have pretty much reserved everything that you wanted reserved and I just want you to see it.

Mr. Hill?

MR. BOWEN: I just want to make sure I do have — you didn't — I don't know if you intended to touch on this but I want a clarification as to whether or not we can go to state court in order to try to get the state court to take control of the funds. I understand this Court is not going to.

THE COURT: I have no desire to have a lawsuit between you or your client and Mr. Davis. And I don't even know who's got that bankruptcy case or if it's — Judge Hoyt's got it. So —

MR. SPEAKER: I hope it's over.

MR. BOWEN: It went of for — It's over. It was fourteen years. I heard it was fourteen years. But, no, I wanted to just —

THE COURT: I'll let you lawyer that but it doesn't belong here because this order says it goes to Hill.

MR. McCLAIN: Your Honor, I would like it clear — you know, that it wouldn't be looked kindly upon if he's going to try to enjoin my distribution or something like that. I mean without it going into escrow.

MR. BOWEN: Right. I don't mind — I don't want to — I want to pursue my rights in state court against the Nucorp funds, but I don't want to do anything that could be considered to be interfering in that regard with the order of this Court and the jurisdiction of this Court. I don't — I understand where I'm going and I want to go there. I just want to make it clear that if I go there and assert whatever I can try to assert in that forum with regards to the Nucorp-Davis proceeds —

THE COURT: My point is the sale is in good faith. The sale's a good deal. The buyer is in good faith. It's going to go through so you obstruct that, you'll be in big trouble.

MR. BOWEN: No, sir. No, sir. I will appeal it but I won't obstruct it unless somebody stays it.

THE COURT: Mr. Hill?

MR. HILL: I didn't have anything further.

MR. McCLAIN: Your Honor, if in light of that there is going to be an appeal, perhaps we should perhaps I should offer these maps as something more than just the demonstrative aids and take them home. And I could I offer those into the record as exhibits at this point and —

THE COURT: I think that's fine.

MR. BOWEN: No objection.

MR. McCLAIN: I would offer them as Exhibits — I believe it's —

THE COURT: Why don't you just mark them A and B.

MR. McCLAIN: A and B?

THE COURT: A is going to be the big plat and then the smaller map with the deleted portions of property will be B.

MR. McCLAIN: We'll take them down and deliver them to the Court.

THE COURT: Miss Bellville will take them right here. Just leave them on her blackboard and —

MR. McCLAIN: Leave them on her blackboard.

THE COURT: Anything else?

MR. SPEAKER: Nothing further, Your Honor.

THE COURT: All right. We stand adjourned till 9:30 Monday. Thank you all.

(These proceedings concluded at 4:51 p.m.)